

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Docket No.: Z-7-2011

Applicants: Nouroldin and Donna Tabatabai
1330 Pebble Hill Road
Doylestown, PA 18901

Owner of Premises: Same as above

Subject Property: Tax Parcel #09-022-115-001, which is located at the address of the Applicants set forth above.

Prayer of Relief: The Applicants appeal a zoning enforcement notice dated September 19, 2011. In the alternative to the appeal from the enforcement notice, the Applicants request a special exception to conduct an H-1 Home-Based Business in the R-1a Residential Zoning District. In addition to the request for the special exception, the Applicants request variances from the following subsections of Section 175-16 H (1): (a), (c), (e), (f), (j), (l), (m), (n), (q), and (t).

Hearing History: The Application was filed in Doylestown Township on October 17, 2011. The initial hearing was scheduled for Monday, November 21, 2011, but the hearing was postponed due to the unavailability of the Township's Zoning Officer that evening. The first hearing was held on December 19, 2011. The second hearing was held on January 26, 2012. The third hearing was held on February 23, 2012. All hearings were held at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicants by: G. Michael Carr, Esquire
Eastburn and Gray, P.C.
60 East Court Street
P.O. Box 1389
Doylestown, PA 18901-0137

Township by: Sinclair G. Salisbury, Code Enforcement Officer
Doylestown Township
425 Wells Road
Doylestown, PA 18901

Ernest Gash
15 Wilkshire Road
Doylestown, PA 18901

Thomas Alon
1310 Pebble Hill Road
Doylestown, PA 18901

Date of Issuance:

March 23, 2012

DECISION

Findings of Fact

1. The Zoning Hearing Board of Doylestown Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearings held.

2. The Applicants are the owners of the subject property and therefore are possessed of the requisite standing to make application to this Board.

3. The subject property is located in the R-1a Residential Zoning District of Doylestown Township. It is 10.262 acres in size and is developed with the Applicants' single-family detached dwelling with a 30 foot by 50 foot pole barn that is two stories high and former tennis court located in front of the residence.

4. The use of the property as a residence is permitted in the R-1a Residential Zoning District by-right.

5. The H-1 Home-Based Business Use is permitted by special exception in the R-1a Residential Zoning District upon a finding by the Zoning Hearing Board that all criteria stated in Section 175-138 of the Zoning Ordinance have been met. Doylestown Township Zoning Ordinance Section 175-32.B.

6. The Applicants received a zoning enforcement notice dated September 19, 2011 for operating an H-1 Home-Based Business from a residential property in the R-1a Residential Zoning District without Zoning Hearing Board approval.

7. The Applicants stipulated that they were conducting their landscaping business from the subject property; and therefore, the Doylestown Township's Code Enforcement Officer did not testify.

8. Section 175-138 of the Doylestown Township Zoning Ordinance establishes 14 criteria, which the Applicants must satisfy in addition to the use regulations set forth in Article IV of the Zoning Ordinance.

9. Section 175-16.H(1) of the Zoning Ordinance establishes 21 requirements that the Applicants must satisfy before a special exception may be granted by this Board.

10. The Applicants purchased the property in 1999, which at that time consisted of the house and tennis court, but later constructed the pole barn.
11. The Applicants use the pole barn and the surface of the former tennis court for storage and parking of vehicles, equipment and supplies all related to the Applicants' landscaping business.
12. The neighborhood is rural in nature consisting of a farm, residences and a daycare.
13. The Applicants reside on the subject property with their 3 children.
14. The Applicants' landscaping business consists mainly of contracts with homeowner's associations and provides lawn mowing services, other landscaping services and snow plowing.
15. The Applicants employ 12 to 14 people.
16. The typical work day starts at 7:45 a.m. to 8:00 a.m. when the employees pick up the vehicles and equipment to go to job sites; sometimes a truck will return to the subject property during the day in order to retrieve more equipment or supplies.
17. The typical work day ends at 5:00 p.m. or 5:30 p.m. when the employees bring back the trucks and equipment.
18. The Applicants' business owns 4 trucks, plus Mr. Tabatabai owns a truck and one of the sons owns a truck.
19. The Applicants store mulch, rocks, trailers and salt outside on the former tennis court area.
20. The Applicants do not have customers that come to the property and only receive bulk delivery of salt and mulch.
21. The Applicants and their employees do perform maintenance on the lawn mowing equipment, including sharpening of the lawn mower blades.
22. The subject property is served by on-lot well water and on-lot sewage disposal.
23. The Applicants constructed a second driveway, which traverses the subject property from Pebble Hill Road to the pole barn and former tennis court area.
24. The Applicants do conduct the landscaping business on some Saturdays, but not all Saturdays and hardly ever on Sundays.
25. The Applicants use an air compressor to put air in the tires of their equipment and vehicles.

26. The Applicants have placed large concrete blocks on the former tennis court creating storage bins that they use to store mulch and salt.

27. The Applicants have been in business for 20 years and have been using the subject property in their business for approximately 5 to 6 years.

28. The Application and the evidence presented generally satisfy the requirements of additional factors, which this Board must consider and the Applicants must satisfy in order for this Board to grant a special exception. Doylestown Township Zoning Ordinance Section 175-138.

29. However, the Applicants requested variances from the following requirements of a H-1 Home-Based Business as set forth at Section 175-16.H(1) of the Doylestown Township Zoning Ordinance:

- (a) The Home-Based Business shall be accessory to a residence and carried on only indoors and within a dwelling or other structure accessory thereto and shall be clearly incidental and subordinate to its use for residential purposes by its occupants.
- (c) Such use shall be limited to single-family detached dwellings.
- (e) There shall be no exterior storage of material or building material.
- (f) There shall be no parking of commercial vehicles, except that parking of not more than 1 commercial vehicle exceeding 1-ton loading capacity and with no more than 2 axles or 4 wheels, whichever is less, including any construction or landscaping vehicles and trailers used for their transportation (i.e., front-end loaders, cranes, cement mixers, riding lawn mowers, etc.) shall be permitted only within a completely enclosed building.
- (j) There shall be no stock piling, storage or inventory of product of a substantial nature.
- (l) The home-based business shall be carried on only by inhabitants of the dwelling and not more than 2 additional employees.
- (m) The floor area devoted to a home-based business shall not occupy more than 25% of the ground floor of the principal residential structure or 500 square feet, whatever is less; all portions of the floor area to be used for the home-based business shall be accessible to employees and clients without having to enter or walk through the areas of the residence devoted solely to residential use, and all areas to be used for employees and client visits shall be in one location and not separated by rooms or hallways which are used for residential purposes.
- (n) No equipment or process shall be used in a home-based business which creates discernible noise, vibration, glare, fumes, odors or electrical interference at the property line, and no equipment or process shall be used which creates visual or audible interference in any radio or television receiver off the lot or causes fluxuations in line voltage off the lot.
- (q) The maximum number of off-street parking spaces shall be limited to 6 parking spaces, which shall not include any garage spaces and shall be designed to comply with the appropriate provisions of Article V of this Chapter.

- (t) Parking spaces required by the home-based business in addition to those required for the residential use must be located to the side or to the rear of the principal residence and must be separated from adjoining properties by a 10-foot-wide planted buffer.

30. The requirements that must be satisfied before this Board may grant a variance are set forth in Section 175-136 of the Doylestown Township Zoning Ordinance.

31. There are no unique physical circumstances or conditions peculiar to the subject property that create a hardship which is unique to the subject property as opposed to the entire neighborhood or Zoning District in which the subject property is located.

32. The Applicants have a reasonable use of the property as their principal residence.

33. Any alleged unnecessary hardship has been created by the Applicants.

34. The granting of a variance would alter the essential character of the neighborhood or zoning district in which the subject property is located in that the daily use of the property as a landscaping business is substantially different in character than the occasional mowing of lawns and landscaping performed at surrounding properties which are primarily individual residences.

Conclusions of Law

1. The Applicants stipulated that they are using the subject property as their principal residence and operating their landscaping business from it. Therefore, the zoning enforcement notice dated September 19, 2011 was properly issued.

2. In order for this Board to grant a special exception, the Applicants must comply with the requirements of Section 175-138 of the Doylestown Township Zoning Ordinance, including Article IV, Use Regulations.

3. The Applicants can not comply with 10 of the 21 requirements for the H-1 Home-Based Business Use and instead request this Board to grant a variance from the 10 requirements. Doylestown Township Zoning Ordinance Section 175-16.H(1).

4. The Applicants failed to present evidence to satisfy the requirements for the Board to grant a variance namely:

- a. There was no evidence of unique physical circumstances or conditions, including irregularity, narrowness or shallowness of lot size or shape, or exceptional, topographical or other physical conditions peculiar to the subject property and that the unnecessary hardship is due to such conditions and not the circumstances or conditions generally created by the provisions of the Doylestown Township Zoning Ordinance in the neighborhood or the Zoning District in which the subject property is located;
- b. That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the

provisions of the Doylestown Township Zoning Ordinance and that the authorization of a variance is therefore necessary to enable the reasonable use of the property;

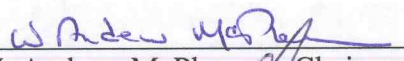
- c. That such unnecessary hardship has not been created by the Applicants;
- d. That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located nor substantially or permanently impair the appropriate use or development of adjacent property nor be detrimental to the public welfare; and
- e. That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least modification possible of the regulation in issue.


Doylestown Township Zoning Ordinance Section 175-136.A(1 – 5).

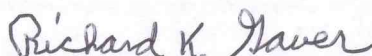
5. Accordingly, the members of the Doylestown Township Zoning Hearing Board determined, unanimously, to deny the Application of the Applicants and the relief requested by the Applicants; namely, the Zoning Hearing Board upheld the zoning enforcement notice dated September 19, 2011; denied the Application for a special exception; and denied the request for variances from the requirements of the H-1 Home-Based Business Use.

WHEREFORE, on this 23rd day of February, 2012, the Zoning Hearing Board of Doylestown Township DENIES the Application, thereby upholding the zoning enforcement notice dated September 19, 2011; denying the request for a special exception for a H-1 Home-Based Business Use in conjunction with a principal residence on the subject property located in the R-1a Residential Zoning District and denying the request for variances from the requirements of the H-1 Home-Based Business Use as set forth in Section 175-16.H(1) of the Doylestown Township Zoning Ordinance.

**ZONING HEARING BOARD
DOYLESTOWN TOWNSHIP**


W. Andrew McPherson, Chairman


William Lahr, III, Secretary


Richard K. Gaver